

U.S. PATENT APPLICATION SERIAL NO.: 10/023,178
AMENDMENT A

ATTORNEY DOCKET NO.: 3968.043

REMARKS

Claims 1-8 are pending. Claims 1-8 stand rejected.

The Examiner's suggestion at page 2 of the Office Action regarding the listing of references in the specification is gratefully acknowledged.

Claims 1 and 8 are amended herein to better define that which Applicant considers his invention. The amendments are supported, for example, by Claim 7 as filed.

Claim 7 is cancelled herein without prejudice or disclaimer.

Care has been taken not to introduce any new matter and entry of the amendments is requested.

Review and reconsideration of the Office Action of December 2, 2003 is respectfully requested in view of the above amendments and the following remarks.

Claim Rejections under 35 U.S.C. § 112, ¶ 2

Claims 1-8 are rejected as being allegedly indefinite on the grounds that "a base matrix comprising a flavor" is not clearly taught.

Applicant asserts that the rejection is rendered moot by the amendments to Claims 1 and 8 herein. As amended, Claims 1 and 8, and thereby all pending dependent claims, clearly recite that the base matrix is a food, cosmetic, or requisite.

Accordingly, Applicant respectfully requests that the rejection be withdrawn.

Claim Rejections under 35 U.S.C. §103(a)

Claims 1-8 are rejected as being allegedly unpatentable for obviousness over Hornstein in view of Ashurst (both of record). The Examiner's position is set forth at page 3 of the Office Action.

Applicant respectfully traverses the rejection on the grounds that a *prima facie* case of obviousness has not been established.

Hornstein teaches that headspace analysis of food products by, for example, gas chromatography, is a fairly good predictor of taste panel evaluations, and "can provide a graphic picture of the composition of the vapor which a taste panel encounters while evaluating a series of samples." See, Hornstein at p.75, ¶ 3.

Ashurst provides a brief overview of flavor analysis, flavor manufacture, and flavor composition and formulation in quite general terms. Headspace analysis and HPLC are mentioned only for the determination of flavor constituents. See, Ashurst p.122, ¶ 3, and § 5.1.5, ¶ 1.

In contrast, the present invention provides a novel method for matching the flavor properties of two matrices by adjusting the flavor composition of a second matrix so that the headspace analysis of the second matrix matches the headspace analysis of a base matrix containing a flavor mixture having desirable properties.

Applicant asserts that Hornstein and Ashurst do not together teach all of the elements of the present invention.

Neither Hornstein nor Ashurst teaches introducing a flavor mixture into another matrix (claim 1(c)), comparing two headspace analyses (claim 1(d) and (e)), or adjusting a flavor composition on the basis of such a comparison (claim 1(e)).

Therefore, the combined references fail to teach all of the elements of the claimed invention, as would be required to make a *prima facie* case of obviousness. Further, one of ordinary skill considering Hornstein in view of Ashurst would not have been motivated to carry out, for example, steps c) to e) of, claim 1 because there is no disclosure in either Hornstein or Ashurst teaching the production of a (second) matrix comprising a flavor mixture already used in a base matrix (first matrix). Accordingly, Hornstein and Ashurst provide neither motivation nor reasonable expectation of success that the flavor composition in a second matrix may be changed in such a manner that the flavor properties of the two matrices correspond.

Even more fundamentally, neither reference teaches the desirability of optimizing the match of headspace analyses by adjusting the composition of flavor components in a matrix: Hornstein merely teaches that headspace analysis is a good predictor of sensory evaluation, and Ashurst does not remedy this deficiency. Applicant asserts that adjusting the composition of flavor components of a matrix to optimize the matching of headspace analyses was not previously recognized in the art as being a useful parameter for optimization. Absent such recognition, i.e. that optimizing the match of headspace analyses is a result-effective variable, the art cannot render

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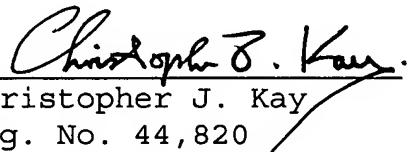
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such a process obvious. MPEP 2144.05(II)(B).

Accordingly, Applicant requests that the rejection of Claims 1-8 under 35 U.S.C. § 103(a) be withdrawn.

As there are no remaining rejections or objections, Applicant respectfully requests that a timely Notice of Allowance be issued in this case. If the Examiner considers that there are any remaining issues that may be addressed by telephone, the Examiner is requested to contact the undersigned at the number below.

Respectfully submitted,



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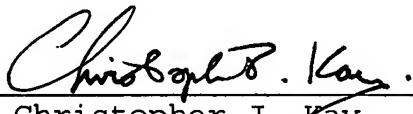
U.S. PATENT AND TRADEMARK OFFICE
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CERTIFICATE OF MAILING AND AUTHORIZATION TO CHARGE

I hereby certify that the foregoing AMENDMENT A for U.S. Application No. 10/023,178 filed December 17, 2001, was deposited in first class U.S. mail, postage prepaid, addressed: Attn: Mail Stop: _____, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on April 30, 2004.

The Commissioner is hereby authorized to charge any additional fees, which may be required at any time during the prosecution of this application, except for the issue fee, without specific authorization, or credit any overpayment, to Deposit Account No. 16-0877.


Christopher J. Kay